

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-2036

To be argued by
DAVID J. GOTTLIEB

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----x
:
EDWARD NEWFIELD, :
:
:
Appellant, :
:
:
-against- :
:
UNITED STATES OF AMERICA, :
:
Appellee. :
:
-----x

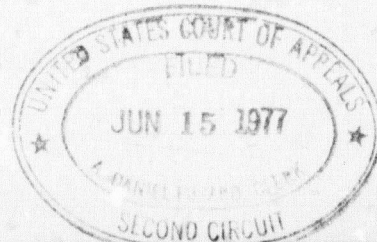
Docket No. 77-2036

APPENDIX TO APPELLANT'S BRIEF

ON APPEAL FROM AN ORDER
OF THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

WILLIAM J. GALLAGHER, ESQ.,
THE LEGAL AID SOCIETY,
Attorney for Appellant
EDWARD NEWFIELD
FEDERAL DEFENDER SERVICES UNIT
509 United States Courthouse
Foley Square
New York, New York 10007
(212) 732-2971

DAVID J. GOTTLIEB,
Of Counsel.



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DISTRICT OFFICE	DOCKET		FILING DATE			J	N/S	O	R	R 23	S	DEMAND OTHER	JUDGE NUMBER	JURY DEM.	DOCKET	
	YR.	NUMBER	MO.	DAY	YEAR										YR.	NUMBER
209 1	76	0011	01	14	76	2	510	1				vacat) sentence	0902		76	0011

PLAINTIFFS
NEWFIELD, Edward W.

DEFENDANTS
U.S.A.

CAUSE 28 U.S.C. §2255

pah

ATTORNEYS

pro se

~~P.O. Box 1000~~

~~Montgomery, Penn. 17752~~

~~(Hospital)~~

1135 Jefferson St. (Bullock's Field)

Atlanta, Ga. 30318

(temporary address per notice of appeal)

U.S. Attorney



☐ CHECK
HERE
IF CASE WAS
FILED IN

FILING FEES PAID

DATE

RECEIPT NUMBER

C.D. NUMBER

STATISTICAL CARDS

CARD DATE MAILED

JS-5

1135
Jefferson
St.
Atlanta
Ga.
30318

DATE 1976	NR.	PROCEEDINGS
Jan. 14		Filed motion to vacate sentence.
14		JS 5 made
Feb. 13		Filed decision & order denying the application on the ground that the files & records of the case conclusively show that the petr. is entitled to no relief.-Burke, DJ Notice to Petr. & U.S. Atty. F-173
13		Filed judgment denying the application-Clerk Notice & copies to Petr. & U.S. Atty. F-17
13		JS 6 made
20		Filed Pltfs. motion to alter or amend judgment.
Mar. 10		" Decision & Order denying Pltfs. application to alter or amend the judgment of the Ct. dated 7-8-74 on the ground that the files & records conclusively show that the petr. is entitled to no relief-Burke, DJ Notice & copies to Petr. & U.S. Atty. F-174
May 20		" Petnr's. Notice of Appeal (copy mailed to U.S. Atty. with copy of CCA Form C and to Clerk, CCA with copy of docket entries and original Form C) - authorization of Judge Burke to file in forma pauperis endorsed on notice of appeal

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CLOSED *appeal*

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

EDWARD W. NEWFIELD,

Petitioner

- vs -

CIVIL 76-11

UNITED STATES,

Respondent

By notice of motion and petition filed January 14, 1976 the petitioner, by Orville E. Stifel next friend of petitioner, moves for an order under 28 U.S.C. Section 2255 vacating the judgment imposed on the defendant in Criminal 110-72 on July 8, 1974, following a trial, upon the alleged ground that the sentence was procured in violation of the constitution and laws of the United States, particularly, that at the time of the trial the petitioner was incompetent and that the fact of his suffering from major mental disorder was a part of the files and records of the respondent and that the respondent failed to make this fact known to the Court.

By notice of motion filed February 19, 1975 the petitioner moved under Rule 35, Federal Rules of Criminal Procedure, to modify the sentence. By order and judgment dated April 14, 1975 the sentence was modified as follows: "This sentence is imposed pursuant to 18 U.S.C. 4208(a)(2). The term of five years is fixed as the maximum sentence of

imprisonment. The defendant may become eligible for parole at such time as the board of parole may determine. It is intended by this judgment that the sentence be served concurrently with the sentence the defendant is now serving pursuant to his arrest on April 22, 1973 as a parole violator and the sentence for parole violation. This judgment is effective nunc pro tunc as of July 8, 1974."

This application is denied upon the ground that the files and records of the case conclusively show that the petitioner is entitled to no relief.

IT IS HEREBY SO ORDERED.


HAROLD P. BURKE
United States District Judge

February 11, 1976.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

EDWARD W. NEWFIELD

- vs -

CIVIL 76-11

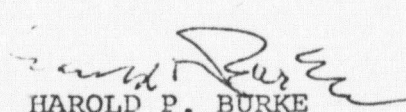
UNITED STATES OF AMERICA

By order dated February 11, 1976 this court denied petitioner's application for an order under 28 U.S.C. Section 2255 to vacate the judgment imposed on the defendant on July 8, 1974 following a trial.

By another application dated February 18, 1976 the petitioner moves to alter or amend the judgment of this court dated July 8, 1974 following a trial.

The application is denied on the ground that the files and records of the case conclusively show that the petitioner is entitled to no relief.

IT IS HEREBY SO ORDERED.


HAROLD P. BURKE
United States District Judge

March 9, 1976.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CIV - 76 - 111

EDWARD W. HEWFIELD,

Petitioner,

Vs.

UNITED STATES OF AMERICA,

Respondent.

CIVIL ACTION#

(In re: 110-72 Crim.)

NOTICE OF MOTION

SIRS:

PLEASE TAKE NOTICE that upon the annexed, verified NEXT OF FRIEND petition of EDWARD W. HEWFIELD, sworn to this ____ day of December 1975, and upon all of the pleadings and proceedings heretofore had herein, a motion will be made to this Court on a Motion Day consistent with 28 U.S.C. § 2243, or as soon thereafter as the calendar permits, for an Order in pursuance with 28 U.S.C. § 2255, setting aside and vacating the judgment imposed heretofore at Crim.# 110-72, for the reason that the same was had in violation of the Constitution and laws of the United States as will be more fully set forth within and for such other and different relief as to the Court may appear to be just and proper.

DATED: Lewisburg, Pennsylvania
December 22, 1975

Yours, etc.,

Orville E. Stifel II

ORVILLE E. STIFEL II
Next of Friend for Petitioner
Edward W. Hewfield
P.O. Box# 1000
Lewisburg, Pa. 17837

cc: United States Attorney
Western District of New York
United States Courthouse
Buffalo, New York 14202

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

EDWARD W. NEWFIELD,

Petitioner,

Vs.

UNITED STATES OF AMERICA,

Respondent.)

CIVIL ACTION # _____

MOTION TO VACATE JUDGMENT AND CONVICTION

PURSUANT TO TITLE 28 U.S.C., § 2255.

COMES THE PETITIONER EDWARD W. NEWFIELD, pursuant to Title 28, United States Code, § 2255, and moves this Court to enter an Order vacating and setting aside the conviction and judgment heretofore had at Crim.# 110-72, for the reasons more fully set forth hereinbelow. In support hereof, petitioner says, as follows:

1. That he is a federal prisoner in service of a five years' term of imprisonment imposed by this Court on July 8, 1974 following his conviction after trial to a jury of a one count indictment (No. 110-72) charging him with a violation of 18 U.S.C., § 2113(a). He says further that he is presently confined in the United States Penitentiary at Lewisburg, Pennsylvania in the direct custody and control of the agents of the respondent-United States.

2. Petitioner believes and therefore says that his conviction at Crim.# 110-72, is illegal and that the same was had in violation of the Constitution of the United States in that at the time of his trial he was incompetent, that the fact of his suffering from a major mental disorder was a part of the files and records of the respondent and that where respondent failed to make this fact known to the Court he was deprived of his rights as insured by the 5th Amendment to the Federal Constitution, in that through respondent's failure to disclose the fact of petitioner's mental illness he was foreclosed a defense of lack of criminal responsibility and therefore a fair trial as a matter of fact and law.

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3. Petitioner avers that on various past occasions he has been confined in hospitals for the care and treatment of the mentally ill, and that on at least two occasions he has been certified as suffering from a psychosis, i.e., schizophrenia, a definitive form of insanity. He says further that in the totality of circumstances surrounding his offense that, at the very least, it was legally incumbent upon respondent to call for a determination in pursuance with prevailing law, 18 U.S.C., § 4244, and that the failure by respondent to place the Court on guard to the fact of petitioner's history of mental illness renders his conviction constitutionally infirm. He says further that the government could not then and cannot now prove petitioner guilty of the crime of which he stands unlawfully convicted and that moreover it is far past the time when a valid determination may be had with respect to his competency or responsibility at the time of his conviction and trial.

For all of the foregoing reasons petitioner respectfully requests this Honorable Court to enter an Order vacating the conviction and judgment herein and for such other, further and different relief as to this Court may appear to be appropriate and just.

DATED: LEWISBURG, PENNSYLVANIA

December 19, 1975

/s/ Orville E. Stifel
Orville E. Stifel II
Next of Friend for Petitioner
Edward Newfield
Post Office Box 1000
Lewisburg, Pennsylvania 17337

V E R I F I C A T I O N

COMMONWEALTH OF PENNSYLVANIA)

COUNTY OF UNION

(SS:
)

ORVILLE E. STIFEL II, being first duly sworn, according to law,
deposes and says that he is the NEXT OF FRIEND for the Petitioner EDWARD NEWFIELD;
that he has read the foregoing annexed motion to vacate sentence; that he knows
the contents thereof; and that the same are true to the best of his knowledge,
information and belief.

/s/ Orville E. Steifel II
Orville E. Steifel II

SUBSCRIBED AND SWORN TO before me,
the undersigned authority, this 22nd
day of December 1975.

/s/ R M Reich
Casemanager

FEB 20 4 21 PM '76

U.S. DISTRICT COURT
W.D. OF NY.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

EDWARD W. NEWFIELD,

Petitioner,

Vs.

UNITED STATES OF AMERICA,

Respondent.

CIVIL #76-11

MOTION TO ALTER OR AMEND JUDGMENT

By Order of February 11, 1976, the Court denied a motion filed herein on January 14, 1976, wherein it stated, "This application is denied upon the ground that the files and records of the case conclusively show that the petitioner is entitled to no relief."

The instant motion is brought pursuant to Rule 59(e), of the Federal Rules of Civil Procedure, Title 28, U.S.C., in that by petition filed in pursuance with § 2255, of that title, petitioner set forth the allegation, through a next of friend application as provided for under 28 U.S.C., § 2242, that he was mentally incompetent at the time of trial and that there was irrebuttable evidence that he suffered from a chronic mental disease of major proportions, i.e., a psychosis (Schizophrenic Reaction, Chronic Undifferentiated Type); and that he had suffered from the same since as long ago as 1966 and that said evidence was a part of the files and records of the respondent prior to trial and that therefore he was denied Due Process in violation of the 5th Amendment to the United States Constitution, where no pretrial psychiatric determination was called for as required by Title 18, U.S.C., § 4242, ACCORD: Bishop vs. United States, 350 U.S. 961 (1956); cf. Sullivan vs. United States, 406 F.2d 180(2d Cir. 1969). Where, as here, petitioner suffers from a progressive psychosis, was found by a government Board of Examiners to so suffer as of February 1966, the Court's order of the 11th of February 1976, ought to be altered or amended and petitioner's motion for relief in pursuance with § 2255, granted as prayed for.

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1.

This Court's Order denying relief in the instant matter and dated: February 11, 1976, was received by petitioner at his place of restraint on Wednesday, February 18, 1976, and the instant motion is timely filed accordingly. A carbon copy of the envelope bearing the Buffalo, N.Y. postmark of the 12th, incl., is being sent to the Court under separate cover to erase all doubt of untimeliness of the herein application pursuant to the 10-day limitation prescribed by Rule 52(e). Moreover annexed hereto and made a part hereof is the Report of the Psychiatric Board of Examiners above referenced; which report purported to make a retrospective determination of competency some 16-months after the fact, despite the view of the Supreme Court in Dusky vs. United States, 362 U.S. 402 (1960), Pate vs. Robinson, 383 U.S. 375 (1966); Drops vs. Missouri, ___ U.S. ___, 95 S.Ct. 826 (1975); Ives vs. United States, ___ U.S. ___, 95 S.Ct. 1671 (1975); Jones vs. Kentucky, ___ U.S. ___, 95 S.Ct. 1671 (1975); and the psychiatric report and diagnosis of Edward Kaufman, M.D., (a Board Qualified Psychiatrist), of October 17, 1973, stating that on September 26, 1973, said psychiatrist found, inter alia, "His present anxiety, impairment of associative thought processes and paranoid thinking support a diagnosis of Chronic Undifferentiated Schizophrenia." Said annexed report further states that petitioner was psychotic as far back in time as 1974, and that Dr. Kaufman (315 W. 104th Street, New York, N.Y. 10025) found petitioner to suffer from the same mental illness in 1966 and 1969 upon examinations had at those times. (See: Petitioner's Exhibits "A" and "B").

For the foregoing reasons petitioner respectfully submits that his conviction and sentence at Crim. #110-72, was had in violation of the Constitution and laws of the United States, that the Order of February 11, 1976, ought therefore to be amended and petitioner's conviction and judgment be vacated and set aside; see Rule 52(b), F. R. Civ. P., Title 28, United States Code.

Dated: Lewisburg, Pennsylvania

February 18, 1976

151 Edward W. Newfield
EDWARD W. NEWFIELD

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CENTER

45 EAST BROADWAY
NEW YORK, N.Y. 10002
Telephone 427-4070

...ADONE MAINTENANCE TREATMENT;
COMMUNITY PREVENTION & EDUCATION.

Mark Silver
Administrative Director

October 17, 1973

Mr. Michael R. McGee
Siegel, McGee and Divan--
1370 Hotel Statler Hilton
Buffalo, New York 14202

RE: Mr. Edward Newfield

Dear Mr. McGee:

I recently interviewed Mr. Newfield on September 26, 1973. This report is based on: the interview of Sept. 1973; a discharge statement from Buffalo State Hospital dated Jan. 12, 1954; a Presentence Report dated Dec. 7, 1964; the report of the Psychiatric Board of Examiners at Lewisburg of February 4, 1966; several phone calls to his wife; a report from a Dr. Morris Herman and my recollection of my previous contacts with him over the course of approximately one year in Lewisburg in 1964 where I had been staff psychiatrist and a contact in California in about 1969 when I had testified in a court case involving him.

When seen on Sept. 26, Mr. Newfield was much the same as he had been in my previous contacts with him. His anxiety was as intense, if not more so, than in prior contacts. He was quite tremulous. His speech was extremely rambling, circumstantial and tangential and he would deviate from an initial point for up to ten minutes and would not return to the subject unless directly brought back to it by the interviewer. As he became more relaxed during the interview, his anxiety diminished as did his circumstantial speech. He was also quite depressed during the interview and cried freely, particularly when discussing the nature of his symptoms and his good feelings about being able to communicate with me again.

He presents numerous paranoid phenomena. Included in these is a detailed preoccupation with the Federal Government being particularly out to get him and kill him. He is also preoccupied with paranoid fantasies, such as the glass blocks in the walls are 2-way mirrors. This thought is more a fantasy than a delusion. He stated that

he no longer heard the hissing sounds which he had heard previously. However, he is currently troubled by what is best termed a somatic delusion, i.e. the feeling that he is charged with electricity to a point where he is actually experiencing voltage.

I reviewed his activities over the past few years. He reported a massive myocardial (heart attack) in June 1971 which seems to be instrumental in his returning to narcotic addiction, both through its psychological effect as well as its causing severe physical pain. He had a recurrence of severe cardiac symptoms in Sept. 1971 under circumstances where it was easier for him to obtain heroin for the pain than receive medical care and he rapidly became readdicted. This addiction motivated his return to New York where narcotics were more readily obtainable. Fortunately in December 1972, he became a patient in a Methadone Clinic and functioned rather well from then to the time of his re-arrest; although the program had a minimum of therapeutic services.

Edward Newfield was first diagnosed as Schizophrenic at Buffalo State Hospital in 1954. The report of the Board of Examiners at Lewisburg in Feb. 1966 confirmed this diagnosis. His present anxiety, impairment of associative thought processes and paranoid thinking support a diagnosis of Chronic Undifferentiated Schizophrenia. His symptoms can improve markedly in a psychotherapeutic relationship as they did during the process of his recent extended interview with me. It is also highly probable that his Schizophrenic process is helped by heroin and/or by methadone and that his use of these drugs can be attributed to his severe mental illness (the exception rather than the rule in most hard core heroin addicts). Further incarceration at this time would most likely cause a deterioration of his severe physical and mental illnesses. It would be far more advantageous to the client and ultimately to society if an alternate program would be considered. These alternatives include careful medical and psychiatric supervision, residential treatment and methadone maintenance. Preferably, all of these modalities could be made available to him and imposed upon him as a condition of parole. All of these treatment facilities are available at the Lower East-side Service Center, although the residential program may not be receiving patients until Dec. 1973-Jan. 1974.

I did not include an extensive social history with this report although one is available in the pre-sentence report. His wife continues to be quite involved with and dedicated to her husband and this should be considered in arriving at a disposition of this present case.

I trust this information will be of service to you.

Sincerely,

Edward Kaufman, M.D.
Chief Psychiatrist

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REPORT OF PSYCHIATRIC BOARD OF EXAMINERS

This inmate was seen on February 4, 1956 by a Psychiatric Board of Examiners consisting of Dr. Leslie A. Angus, consulting psychiatrist; Dr. Edward Kaufman, staff-psychiatrist; and Mr. Paul Elzig, staff-psychologist in order to determine his mental competency. The certification board was held as a result of the inmate having filed a motion pursuant to section 2255 of title 28 United States Code claiming that he was not mentally competent to plead at the time he entered his plea in the case of U.S.A. vs Edward William Newfield case No. 34056 which charged bank robbery on two counts.

The subject is a 38 year old married, white male who received several psychiatric interviews prior to the Board and also received the following psychological tests: The Rorschach, Minnesota Multiphasic Personality Inventory, Prison Classification Inventory, Bender-Gestalt, House Tree Person and Sentence Completion.

The tests demonstrated a relatively disturbed individual who made some attempt to appear sicker than he actually is by exaggeration of symptoms. However, during the psychiatric interviews, the administration of the Rorschach examination and the meeting of the Psychiatric Board of Examiners he was quite frank, honest and forthright.

His previous psychiatric, social and criminal history was reviewed and it was revealed that he had been addicted to narcotics for over 20 years. He claims to have been initially addicted as a result of a medical problem. He states that he has had a previous history of psychiatric hospitalizations which included a stay at Brigham Hall Hospital for several weeks. However, he states that he left that hospital because he was unable to obtain drugs there and had been addicted. He states that his hospitalization had been prompted because he spent two months in a state of isolation in his own bedroom. Following this he was hospitalized at the Mier Hospital and was committed from that hospital to Buffalo State Hospital. However, he did not want to remain there and his family signed him out of that hospital. His diagnosis on these occasions included psychopathic personality and drug addiction.

On mental status examination, he appears to be a tall, thin individual with some anxiety and depression. One of the most marked findings in the mental status examination is his excessive degree of tangential and circumstantial speech. At times he will ramble on for several minutes in an attempt to make a point. Although he is frequently unsuccessful in making his point, he always manages to get back to where he starts from. He looks upon his problem in a rather paranoid manner. He states that he feels that all of

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page 2

societies forces have been directed against him for the past 20 years and that nobody really cares for him. He makes this statement in spite of the fact that his family has been repeatedly instrumental in getting him out of trouble. He also states "I got into a contest with the whole world to see if they could stop me from using drugs." However, he feels that this is a battle that neither he nor the world has won. This paranoid thinking is more typical of sociopathic and not sufficient to warrant a diagnosis of paranoid schizophrenia. However, it was felt that on the basis of an over-idealistic thinking disorder, somewhat flattened affect, and an autistic life plan that the most appropriate diagnosis for this individual is that of schizophrenic reaction, chronic undifferentiated type with some sociopathic trends. Despite this diagnosis, it was felt by the Psychiatric Board of Examiners that at the time of his crime and of his trial, to the best of our knowledge, the subject was able to distinguish right from wrong and was capable of controlling his impulses to act-out anti-socially.

SUMMARY: Although this individual's diagnosis is that of a schizophrenic reaction, chronic undifferentiated type with some sociopathic trends, it is felt that he was competent at the time of his crime and at the time of his trial. Although this individual has only a fair to poor prognosis some consideration should be given in the future to transfer to a treatment center for narcotic addicts such as Lexington or Fort Worth. At the present time his long sentence prohibits this.

Edward Kaufman, M.D.
Chief, Psychiatric Services

in
EK/rmk
2-11-66

ESTHIA
FED. HEALTH PROGRAM SERVICE

MORRIS HERMAN, M.D. P.C.

30 EAST 40TH STREET

NEW YORK, N. Y. 10018

MURRAY HILL 8-3658

September 13, 1973

Mr. Michael R. McGee
Siegel, McGee and Dwan
1370 Hotel Statler Hilton
Buffalo, New York 14202

RE: Mr. Edward Newfield

Dear Mr. McGee:

I have reviewed the records you sent me. I have also seen Mr. Newfield on September 3, 1973 and Mrs. Newfield on September 10, 1973.

Significant in his past is the history given by his wife that his family committed him to the Meyer Memorial Hospital and subsequently to Buffalo State Hospital in 1954, where he remained for 2 months. There were also more than one admission to Willard State Hospital.

In the report of the Psychiatric Board of Examiners in the Federal Jail dated February 4, 1966, the significant findings were some anxiety and depression, and an excessive degree of tangential and circumstantial speech. The Board considered him to be a schizophrenic individual with sociopathic trends.

As far as I have been able to ascertain Mr. Newfield did not get into difficulty at Lewisburg. Whatever psychiatric condition he had, it did not develop into a state that showed such intensities that it interfered with his adjustment at the Prison. As far as I know he did not have to be referred to a psychiatric hospital.

Then on April 10th, 1970 there is a report by a psychiatrist, Dr. Wolfram Rieger. Again he found some anxiety and depression. He describes his speech as excessive as to detail but not pathological since he was impressed with coherence and relevance. He also described his resentment towards his environment which was understandable under the circumstances. He concluded that in the past year while under examination he was without any signs of mental illness.

He was paroled in 1970 and went to Rochester to live with his wife and daughter. His wife describes his behavior at that time as excellent. He did not use drugs and socialized with some friends and family. However he was unable to obtain employment and changes began to take place in him. He became more tense and had outbursts of temper. After a trifling

argument he complained of chest pains and was found to have a cardiac infarction in June 1971, for which he was treated at the Strong Memorial Hospital. He tells me that he received morphine as part of his treatment for his cardiac condition. This caused his addiction to recur. When he left the hospital he returned to the use of drugs. His wife observed that his condition deteriorated markedly. Not only was his physical energy poor but he was more despondent and gave up trying. He again blamed the government for all that happened to him in the past 5 years. He explained to me that he was passed over for jobs in the post office and offered only a temporary letter-carrier job at the Christmas season. This was after his heart attack when he could not do heavy physical work and could not tolerate the cold. His mood was depressed and resentful. When he passed a bank he impulsively walked in and gave the teller a threatening note. As a result he was given several thousand dollars which he took and left. This was December 1971.

He was arrested in April 1972 and went back to Lewisburg. While out on bail, he remained at home. His wife reports that during this time at home his behavior was distraught. He was back on drugs; entertaining the belief that he was followed and would be rearrested momentarily. He was wary, kept looking around. At one point he shouted out of the window for people to stop looking at him. When his wife discussed this with him later, he had no recollection of this behavior.

In October 1972 after having been involved in an automobile accident, he left and came to New York City where his wife and daughter joined him. In December 1972 he became a patient at a methadone clinic and his wife says he was a faithful patient, following instructions well. He was rearrested on July 23, 1973.

Mr. Newfield does speak in a diffuse manner in which he gives excessive detail at times, or jumps to other topics but not unrelated to the subject matter. His attitude is characterized by his belief that circumstances have forced him into a way of life and have resulted in depriving him of opportunities to use his intelligence and abilities. Of course there is some truth to this. At one point he told me that the FBI came at him with drawn guns as if they considered him a desperado like Dillinger. Although he said this in the form of a complaint, he seemed to enjoy this characterization.

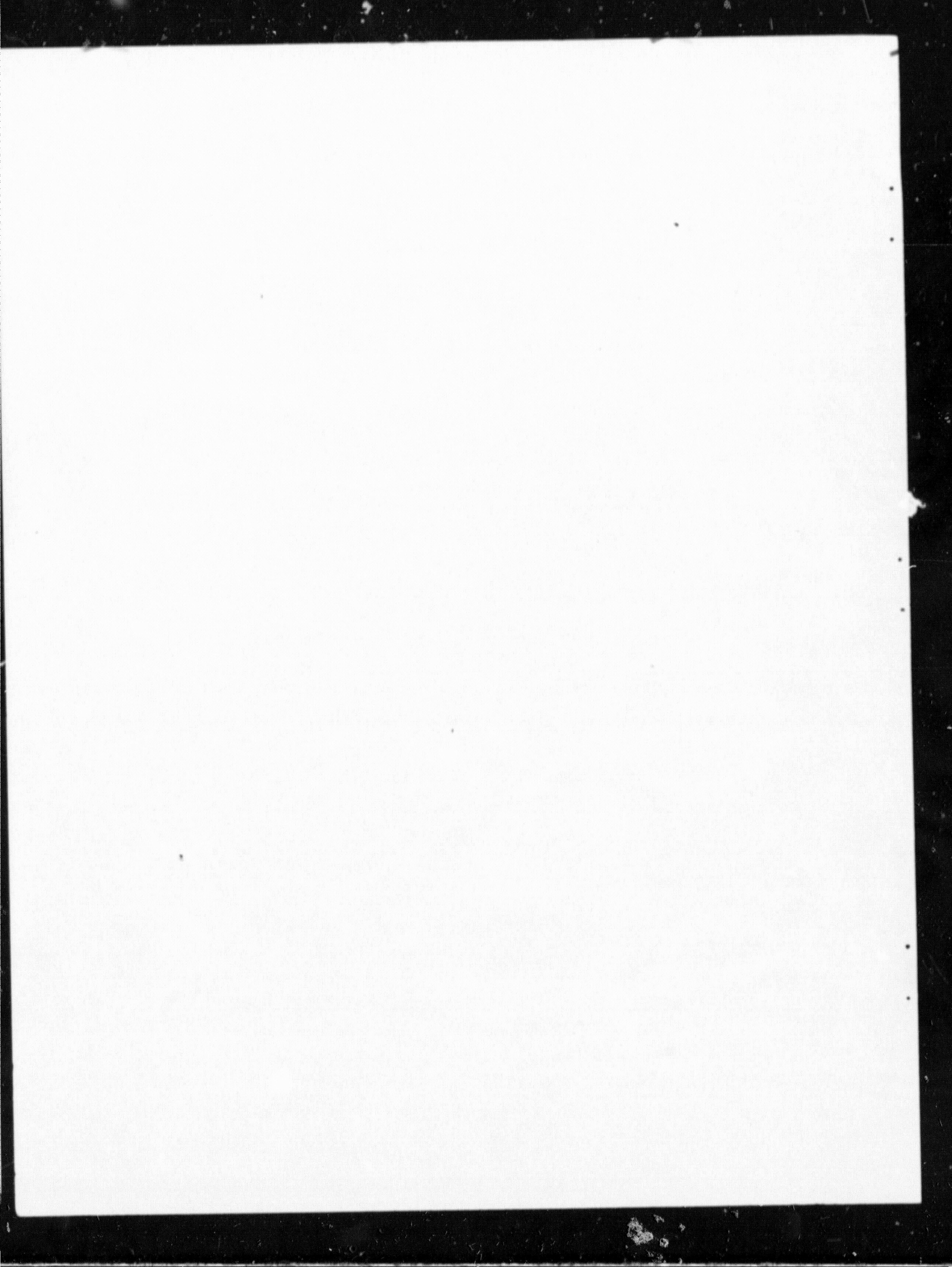
It is my opinion at this point that there are important personality deficits in this man. At certain times they appear greater than at other

times. It is not clear that these deficits reached the intensity to be considered as psychosis, although in 1966 he was designated as schizophrenic. This can refer to a personality state, sometimes stated as schizoid rather than schizophrenic which does not ordinarily progress to a state of decomposition. It is also clear that great stress was endured by his return to addiction, his failure in employment, his heart attack, and later his fear of arrest. I cannot find sufficient symptoms at this time to diagnose schizophrenia but I can say that his personality and character structure are that of a schizoid person. Of overriding importance is his long addiction and its consequences with failure to adjust, and the need for money to feed the habit.

Sincerely,

Morris Herman M.D.
Morris Herman, M. D.

MH/wl



CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

CR-1972-110

TITLE OF CASE

THE UNITED STATES

22.

EDWARD WILLIAM NEWFIELD

Willfully and unlawfully and with felonious intent, by force and violence and by intimidation, did take from the person and presence of an employee, money belonging to an FDIC-Insured bank, in violation of Section 2113(a), Title 18, U.S.C.

ATTORNEYS

For U.S.:

~~David Larimer, Esq.~~

Got AKA / WALK / YAKH / / End

Asst. U.S. Atty.

U.S. Courthouse, 100 State
Street, Rochester, N.Y.
14614

For Defendant:

Michael McGee, Esq.

426 Franklin Street

Buffalo, New York 14202

(16) 881-5800

Offenses: 12/1/1971

1 Ct

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed	Clerk	7/1/72	# 14918	5.00	5.00
J.S. 3 mailed AUG 5 1974	Marshal	7/1/72	new 45 of 102		
Violation	Docket fee				
Title 18					
Sec. 2113(a) 1972					
Apr. 5 -	Filed Order directing deft. be committed & examined for further medical evaluation, etc.--HENDERSON, J.				
Apr. 26 -	Filed Order - deft. be transported to Lewisburg Penitentiary & remain for a period of two weeks or until such time as medical personnel at the prison hospital believe that he is fit to be placed in jail, etc. HENDERSON, J.				
1972	PROCEEDINGS				
June 16	Filed Indictment				
June 16	J.S. 2 made				
May 22	Filed Magistrate's transcript				
June 26	Arraignment. Deft. present with counsel, enters a plea of not guilty. Deft. moves for reduction of bail. The Court reduces bail to \$5,000. The Govt. moves for an order to have a Dr. appointed to xxxxx examine the deft. Granted. The Govt. moves for an order to produce G.Jury minutes. Granted. All motions returnable 7/10/1972				
July 11	Filed (\$5,000) bond - Cosmopolitan Mutual Insurance Co., surety.				
July 21	Filed Ct. Stenographer's minutes of 6/26/1972				
July 24	Deft. present with counsel. Matter adj. till 7/28/1972				
Oct. 3	Filed Govt.'s answer to Deft.'s demand for a Bill of Particulars				
Oct. 3	XXXXXXXXXX Filed the Govt's affidavit in opposition to Deft's motion for Discovery and Inspection				
Oct. 5	Filed the Govt's notice of motion and motion to set a date for trial for criminal trial calendar for the October 1972 the Ct.				
Oct. 10	Criminal Trial term set 10/10/72 at Roch.				
Oct. 18	Filed Order to show cause why expert witnesses should not be Appt. by / Filed Order granting the Govt's application that Dr. Gerald Murphy conduct an examination for the purpose of obtaining testimony				

C

DATE	PROCEEDINGS
1972	
Oct. 18	and a medical opinion as to the physical fitness of the above-named deft. to stand trial for the charges set out in the indictment in this criminal action--BURKE, J. (P. 100 - Roch.)
Dec. 13	Filed Order appointing expert witness--BURKE, J.
1973	
Jan. 13	Filed Govt's notice of motion, motion and affid. of service to set a date for trial for criminal trial calendar, ret. 3/26/1973-Roch.
Mar. 26	Motion to set date for trial. The Govt. is ready. No appearance for the Deft.
Apr. 30	Filed Govt's motion for order directing deft. to appear at hospital for examination to determine if he is able to stand trial - ret. 5/13/73 at Roch.
May 14	Motion by Govt. for order directing Deft. to appear at hospital for examination, etc., consented to, removed from calendar.
Nov. 30	Filed Govt's notice of motion for an order directing the Deft. to submit samples of his head hair to and under the direction of the FBI, etc., ret. 12/10/1973-Roch.
Dec. 10	Filed Order that the Deft. Edward William Newfield, submit to the taking of head hair samples from his person by Agents of the F.B.I., at the U.S. Penitentiary, Lewisburg, Pa., --BURKE, J. (filed in Rochester)
Dec. 10	Motion by Govt. for order directing Deft. to submit samples of head hair, etc. The Deft. objects. The Court will sign an order and the deft. will receive copies of scientific reports.
1974	
Jan. 14	Filed Govt's Notice of Readiness for trial.
Feb. 14	Filed Govt's motion to set a date for trial for Criminal Trial Calendar & Notice of motion, with proof of service, ret. 2/25/1974 - Roch.
Feb. 25	Filed at Rochester - Deft's affidavit and notice of motion to dismiss and for Brady material, ret. 3/11/1974 at Roch. (motion argued 2/25/74)
Feb. 25	The Court denies Deft's motion to dismiss because of delay and motion for Brady material is agreed to by the Govt. Motion by Govt. to set date for trial. No trial date set because Deft's atty. is engaged in Buffalo.
Mar. 8	Filed Govt's response to Deft's motion to dismiss & motion for Brady material
Mar. 11	Argument re denial of Deft's motion to dismiss. To be submitted ten days from today. No appearance for the Deft.
Apr. 18	Filed Order denying deft's motion to dismiss and directing Govt. to furnish on or before 5/1/74 copies of certain statements, etc. - Burke, J.
May 6	Filed Pet. for Writ of H.C. Ad Prosequ. RMX for the return of Deft. from Lewisburg. Penitentiary--BURKE, J.
May 8	Filed four subpoenas - Christian Kunst, Mary Ann Martin, Linda Spring, and Lawrence McVinnie, served 5/3/1974
May 14	Filed Subpoena (D.T.) - Sgt. Robert R. Kimmel, served 5/9/1974; and two subpoenas - William Tehan, and Dale Kreiser, served 5/9/1974
May 21	Govt. moves case to trial before Judge Burke, and Jury at Rochester. N.Y., jury is duly empaneled- trial is adj. until tomorrow.
May 22	Trial continues from yesterday with the same appearances --- trial is adj. until tomorrow
May 23	Trial continues from yesterday with the same appearances --trial is adj. until tomorrow

CRIMINAL DOCKET

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DATE 1974	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
May 24	Trial continues from yesterday with the same appearances- Trial is adj. until 5/28/1974		
May 28	Trial continues from May 24, 1974 with the same appearances- The jury returns with the following verdict: Guilty as charged in the indictment; Jury is polled at the request of the Deft. The jury is excused. The Deft. moves to set aside the verdict and for a new trial. Denied. Sentence is deferred until 6/10/1974.		
May 28	Filed Two subpoenas Bernadette M. Chenier, Maurice J. Chenier, served 5/23/1974		
May 29	Filed four subpoenas - Gustavo Iacobelli, Sgt. Robert Kaseman, John A. Boscarino, Paul A. Kingston, served 5/23/1974; and one subpoena (D.T.) - Lee Halperin, served 5/23/1974		
May 31	Filed two subpoenas - Fred Sargenti, Ted C. Hale, served 5/29/1974		
June 24	Sentence - adj. to 7/8/74.		
June 27	- Filed subpoena (D.T.) - Robert M. Weiss, served 5/16/1974		
July 8	Deft. is sentenced as follows: The Court: I impose a sentence of five (5) Years. I recommend that the Deft. serve his sentence in an institution where treatment for drug addiction is available. I would like to and it is my intention to, so far as it is possible for me to do so, that he serve the sentence on this charge concurrent with his parole violation sentence. BURKE, J.		
July 8	J.S. 3 made		
July 8	Filed Judgment and Commitment. Commitment issued.		
July 11	Filed Deft.'s Notice of Appeal; cy. to the Deft., U. S. Atty, CCA with statement of docket entries. Forms A, B and CJA-23 not submitted by Deft.		
July 16	Criminal Case Information (Form A) received from Judge Burke, and transmitted to the Appeals Coordinator, Michael Morganstern, Ct. of Appeals, 2nd Circuit.		
July 23	Filed certified cy. of J. and C. with Marshal's return execution on 7/16/74 to the U. S. Penitentiary at Lewisburg, Pa.		
July 23	Filed cy. of Writ. of H. C. AD PROSEQ. with Marshal's return of execution to the USP Lewisburg, Pa. on 7/16/74		
Aug. 5	Filed cy. of Order from CCA- Record to be docketed to the C.A. on or before 8/9/74		
Aug. 9	Filed Copy of Defendant's notice of motion filed on 7/20/72, as-referred to in U.S. Atty's affidavit in response to the motion, for bill of Particulars, Brady material, Production, and etc. -which was ret. in Rochester, 7/20/72		
Aug. 9	Filed Copy of letter from defense Attorney to Judge Burke, dated 2/28/74		
Aug. 13	Orig. Pertinent papers, Clerk's certificate, docket entries, mailed to the Clerk, CCA		
Dec. 9	Filed Ct. Steno's minutes of proceedings of 7/8/74		
1975	CLOSED		
Feb. 10	Filed certified cy. of Order from the CCA, granting defendant Newfield's motion to withdraw the appeal in the above-entitled matter.		

CERTIFICATE OF SERVICE

June 15 , 19 77

I hereby certify that a copy of this brief and appendix has been mailed to the United States Attorney for the **Western** District of New York.

David J. Gosselin